



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/468,777 12/21/99 HASEBE

K 0327-0815-0

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EXAMINER

WELLS, L

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

02/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p>09/468,777</p>	<p>Applicant(s)</p> <p>HASEBE ET AL.</p>	
	<p>Examiner</p> <p>Lauren Q Wells</p>	<p>Art Unit</p> <p>1619</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 10 is/are rejected.
- 7) ☒ Claim(s) 4-9 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/468,777.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 20) <input type="checkbox"/> Other: |

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DETAILED ACTION

Claims 1-10 have been presented for examination and will be reviewed on their merits.

Priority

It is noted that the foreign priority date is not perfected until an English translation of the priority document is provided.

Specification

The disclosure is objected to because of the following informalities: Amphipathic is spelled incorrectly throughout the entire disclosure. —

Appropriate correction is required.

Claim Objections

Claims 4-9 are objected to under 37 CFR 1.75(c) as being in improper form because multiple dependent claims should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claims 1 and 10 are objected to because of the following informalities: amphipathic is spelled incorrectly. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 10 are rendered confusing by the description of

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(a). It is unclear whether the "molecule thereof" is referring to the dispersoid or to the amphipathic lipid, and it is further unclear whether the hydroxy and amide are being referred to as one combined group or if they are two separate groups. Claims 2 and 3 are rejected for the use of improper Markush groups. See MPEP 2173.05(h) for examples of proper conventional or alternative Markush-type language. The term "washing-away type" in claim 10 is a relative term which renders the claim indefinite. The term "washing-away type" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Pillai et al.

(5,476, 661).

Pillai et al. teach cosmetic compositions which meet the instant composition claims 1-3. Amphipathic lipids are disclosed as comprising 0.0001-50% of the composition and surfactants are disclosed as comprising 0.5-30% of the compositions. Surfactants disclosed include alkoxylated compounds based upon fatty alcohols, fatty acids and sorbitan and alkyl polyglycosides. See Col. 4, line 24-Col. 11, line 61; Col. 13, line 45-line 67; Col. 22, line 30-Col. 25, line 3.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pillai et al. in view of Vanlerberghe et al. (5,985,255).

Pillai et al. is applied as discussed above. The reference lacks teaching average particle size.

Vanlerberghe et al. teach cosmetic microdispersions. Particles having an average diameter between 0.1-200 μm are disclosed as well known in the art. See Col. 1, line 8-Col. 2, line 11.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the particle size of the amphipathic lipids of Pillai et al. to reflect

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those taught by Vanlerberghe et al., because of the similar expectation of achieving stable, non-greasy hair lotions.

The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. Therefore, the claims are properly rejected under 35 U.S.C. § 103.

Prior Art

The prior art made of record and not specifically relied upon in any rejections cited above is either 1) considered cumulative to the prior art that was cited in a rejection or is 2) considered pertinent to the applicant's disclosure and shows the state of the art in its field but is not determined by the Examiner to read upon the invention currently being prosecuted in this application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

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Lauren Q. Wells
January 26, 2001



DIANA DUDASH
SUPERVISORY PATENT EXAMINER
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